

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District <u>Northern District</u>
Name <u>Eric Perez</u>	Prisoner No. <u>12B0626</u>	Case No. <u>11-454</u>
Place of Confinement <u>Coxsackie Correctional</u>		
Name of Petitioner (include name under which convicted) <u>Eric Perez</u>		Name of Respondent (authorized person having custody of petitioner) <u>V. Daniel F. Martuscello Jr.</u>
The Attorney General of the State of: <u>New York</u>		

PETITION

1. Name and location of court which entered the judgment of conviction under attack Supreme Court State of New York Jefferson County
2. Date of judgment of conviction February 14, 2012
3. Length of sentence 1 1/2 - 3 years
4. Nature of offense involved (all counts)
PL 215.51 (b)(v), 215.52(1), 215.51 (b)(i), 215.5 (b)(vi),
215.50 (3), 265.02 (1), 120.14 (1), 120.14 (3), 120.90 (1),
215.30 (3), 260.10 (1), 215.50 (3), 260.10 (1)
5. What was your plea? (Check one)

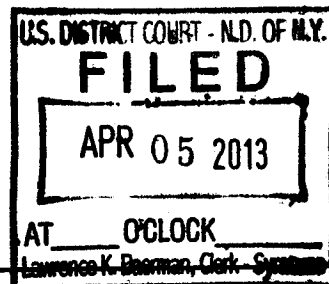
(a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
There were two other misdemeanor charges that were auto included
in the City of Hudson, and Contempt 2nd Term of LeRoy
- ~~6. If you pleaded not guilty, what kind of trial did you have? (Check one)~~

~~(a) Jury ☐~~
~~(b) Judge only ☐~~
- ~~7. Did you testify at the trial?~~

~~Yes ☐ No ☐~~
- ~~8. Did you appeal from the judgment of conviction?~~

~~Yes ☐ No ☐~~



9. If your answer to 8. was "yes," attach a copy of the appeals court decision to this petition and answer the following:

- (a) Name of court (e.g., NYS Sup. Court, 4th Dept.) _____
- (b) Result _____
- (c) Date of result and citation, if known _____
- (d) List all grounds you raised (1) _____
- (2) _____
- (3) _____
- (4) _____

10. Did you seek further review of the appeals court decision by a higher state court (e.g., the NYSCourt of Appeals)?

Yes ☐ No ☐

11. If your answer to 10. was "yes," attach a copy of the higher state court decision to this petition and answer the following:

- (a) Name of court _____
- (b) Result _____
- (c) Date of result and citation, if known _____
- (d) List all grounds you raised (1) _____
- (2) _____
- (3) _____
- (4) _____

12. Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

13. If your answer to 12. was "yes," attach a copy of the United States Supreme Court decision to this petition and please answer the following with respect to each direct appeal you asked the United States Supreme Court to review:

(a) Result _____

(b) Date of result and citation, if known _____

(c) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g. a petition under NY CPL § 440, a state habeas petition, or a previous petition under 28 U.S.C. 2254) with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

15. If your answer to 14. was "yes," attach a copy of that court's decision to this petition and give the following information:

(a) Name of court Supreme Court of Jefferson County

(b) Nature of proceeding CPL 440.10 motion

(c) Date Filed May 29, 2012

(d) List all grounds you raised (1) Court was Corrupt

(2) Ineffective Assistance of Counsel, Interference of PC in motion

(3) Unlawful Plea Bargain violated

(4) Mental and physical defect

- (e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☒

(f) Result _____

(g) Date of result _____

16. If your answer to 14. was "yes" and you also filed a second petition, application, or motion, attach a copy of that court's decision to this petition and give the same information:

(a) Name of court Supreme Court State of New York Appellate Division 4th Dept.(b) Nature of proceeding CPL 460.15 motion certificate granting leave to appeal(c) Date Filed October 1, 2012(d) List all grounds you raised (1) Court was corrupt(2) Protective Counsel / interference with CPL 440.10 motion by NYS PD(3) Unlawful Plea Bargain violated(4) Mental and Physical Defect

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☒(f) Result Denied(g) Date of result January 8, 2013

As to any third, fourth, etc. petition, application, or motion, attach a copy of that court's decision to this petition and give the same information asked for under 15. and 16.

17. If your answer to 14. was "yes" and if the court did not grant the petition(s), application(s), or motion(s) you listed under 15. and 16., did you appeal to an intermediate court of appeals (e.g., the New York State Court of Appeals or the Second Circuit Court of Appeals)?

Yes ☐ No ☒

18. If your answer to 17. was "yes," attach a copy of the appeals court decision to this petition and answer the following regarding each petition, application, or motion:

(a) Name of court _____

(b) Date Filed _____

(c) Result _____

(d) Date of result and citation, if known _____

(e) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

19. Did you appeal to the highest state court (e.g., the NYS Court of Appeals) or the United States Supreme Court for review of decisions regarding the petition(s), application(s), or motion(s) you listed in 15. and 16.?

(a) First petition Yes ☐ No ☒

(b) Second petition Yes ☐ No ☒

(c) Third petition Yes ☐ No ☐

[List any other petition and indicate yes or no.]

20. For each "yes" answer in 19., attach a copy of that court's decision to this petition and give the following information:

(a) Name of court _____

(b) Date filed _____

(c) Result _____

(d) Date of result and citation, if known _____

(e) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

21. If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

The State Courts have made it clear to me that they do not want to correct their own mistakes by sending me a denial certificate with the Court Seal of the Appellate Division Fourth Department altered. The blind lady of Justice which is on the seal of all court documents from the state is unblindfolded on my denial of CPL 460.15 motion Certificate signed by the Hon. Mary J. Scuderi and Francesco Cufarelli. I have included the exhibit in my petition for your examination. My incarceration and - 6 - legal movements in the state will be denied no matter what.

22. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize briefly the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. See 28 U.S.C. §2254(b). If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. See 28 U.S.C. §2244(b).

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge and the consequences of the plea

Supporting FACTS (state briefly without citing cases or law): Please see attached

Application for Federal Habeas Corpus Relief

B. Ground two: Denial of effective Assistance of Counsel

Supporting FACTS (state briefly without citing cases or law): Please see attached application for Federal Habeas Corpus

C. Ground three: Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant

Supporting FACTS (state briefly without citing cases or law): Please see attached application for Federal Habeas Corpus

D. Ground four: Conviction obtained from a defective indictment based on a succession of misdemeanor arrests, last of which was for Contempt and on May 9th, 2011 in which there is no record of arraignment (transcripts ext).

Supporting FACTS (state briefly without citing cases or law): Please see attached application for Federal Habeas Corpus

23. If you did not previously present any of the grounds listed in 22A, 22B, 22C, and 22D in any other court, state or federal, state briefly what grounds you did not present and give your reasons for not presenting them:

22 C, 22 D, 22 F, 22 G. I did not raise 22 C as evidence withholding but mentioned it because I did not realize that the child abuse report was exculpatory evidence, 22 D I mentioned the fact that I didn't have a lawyer & there was no court record at my arraignment & my lawyer said it didn't matter. 22 G I didn't know this was grounds.

E. Ground Five: Jefferson County Supreme Court and the 4th Appellate are corrupt. → Please see attached Federal Habeas Corpus application

F. Ground Six: Collateral Attack in civil proceeding Family Court of Jefferson County. Please see attached application for Federal Habeas Corpus Relief.

G. Cruel and Unusual Punishment → Please see attached application for Federal Habeas Corpus.

24. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

(a) Name of court _____

(b) Nature of proceeding _____

(c) Date filed _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you challenge in this petition:

(a) At preliminary hearing Sheila Singman

(b) At arraignment and plea At arraignment for ind. 11-404 Matthew Pender
At Plea Mr. Tony Neddo

(c) At trial _____

(d) At sentencing Mr. Anthony Neddo

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes

☐

No

☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes

☐

No

☐

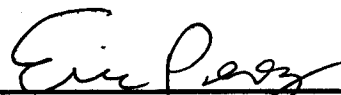
Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

March 9, 2013

(Date)



Signature of Petitioner